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# BANKING DEPARTMENT NEWSLETTER FALL 2003

[www.state.nh.us/banking](http://www.state.nh.us/banking)

Volume 2 • Issue 3

## Note from the Commissioner

It has been a busy year for the Department. Although I am not sure there is ever a quiet year for the Banking Department.

First off, there are a lot of new faces around the Department. We have hired 13 new employees and promoted several others since last January.

In addition to the usual activities, it was the first year of a legislative cycle. That is the year that the budget is passed and most legislation is considered. It was a very productive session for the Department. Almost all the consumer credit division statutes were re-written and technical changes were made in the banking and credit union areas.

The final budget included the funding that we requested for the next biennium, including provisions doubling the budget for the consumer credit division. The budget included 14 new positions for the Department. Most of these were examiners but it also included an additional legal position and several support staff.

After the session, the consumer credit renewal process was streamlined and we started hiring new examiners and additional licensing staff. We will be hiring additional examiners over the next year. The first group is being trained and when they are fully trained, the next "class" of examiners will be hired and started in the training process.

With a productive year behind us, we at the Department are looking forward to a busy and productive year in 2004. We hope you and yours have a successful and prosperous new year.

## New Personnel in the Banking Department

Celeste Couture recently joined the staff and will oversee the licensing section of the Consumer Credit Division. Celeste comes to the department from the Bureau of Securities Regulation where she specialized in licensing for the past 15 years. Also recently joining the Consumer Credit Division are three new examiners: Lorry Cloutier, Vincent Cacciola and Michael Poullos.

Recently joining the Legal Division are Staff Attorneys Andrea Boudreau and Anne Rabuck. Andrea will be working primarily with the Consumer Credit Division and Anne will be working with the Banking Division.

We also welcome Executive Secretary Carolyn Dolph and Accounting Technician Trudy Goodyear.

## Newsletter

The response to the Newsletter continues to be good. However, we would like to encourage more of you to receive the newsletter via email. Please email [newsletter@banking.state.nh.us](mailto:newsletter@banking.state.nh.us) and put "Newsletter" in the subject line. The Newsletter is also available on our website.

## Account Information At-a-Glance

We send the form (NHBD-10) out in December and June. The form is required to be submitted by all state chartered institutions by January 1<sup>st</sup> and July 1<sup>st</sup> of each year. BAN 705, available on our website, is the governing regulation. In addition, the form is required to be posted in the lobby of the institution's main office as well as all branches. The form is available on our website and can be emailed to [cbond@banking.state.nh.us](mailto:cbond@banking.state.nh.us) when it is complete or you can mail it in.

## Interest on Escrow Accounts

We send out the form in December and June each year to all state chartered institutions. From the information received we calculate the interest rate payable on escrow accounts for the next six month period. RSA 384:16-c and RSA 384:16-e, available on our website, are the governing laws. The form is available on our website and can be emailed to [cbond@banking.state.nh.us](mailto:cbond@banking.state.nh.us) when it is complete or you can mail it in.

## Privacy

All mortgage lenders should be aware that a bill prohibiting the placement of a social security number on a mortgage deed is likely to pass into law this session. House Bill 342 originally prohibited the posting or display of an individual's social security number on any document that may be available to the public, on the internet, on an identification card or visible through an envelope window. It was studied by the House Commerce Committee during the summer. The bill has been amended to prohibit any person or entity from submitting an individual social security number on a mortgage deed to be recorded at the registry of deeds unless the individual has requested it be included (an unlikely event).

In addition, Sen. Sheila Roberge has introduced legislation that would prohibit the submission of social security numbers on documents to be recorded at the Registry of Deeds.

Even without legislation, in this era of identity theft, every mortgage lender should review their processes to ensure that those processes do not foster or promote identity fraud.

Given the possibility of identity fraud and the likelihood of legislation, you should check with your closing agents and title companies to ensure that mortgage deeds and applicable computer software do not include or provide for a social security number on documents to be recorded at the Registry of Deeds.

## Bulletin

Each month we publish a Bulletin that lists the status of applications for new banks, credit unions, nondepository trust

companies, bank/credit union mergers, nondepository bank change in control, new branches, ATM's, and charter amendments. The Bulletin is posted on our website.

## Law Books

The 2003-2004 Law Books are now available. Contact Carolyn Bond at [cbond@banking.state.nh.us](mailto:cbond@banking.state.nh.us) if you would like to order one at a cost of \$38.00 plus shipping. The website has been updated with all the changes.

## BANKING DIVISION NEWS

### Annual Reports

You probably have already received the annual report forms from us. After a review of the annual reporting requirements, we changed the forms to make them less burdensome for you and more efficient for us. Some forms were eliminated, while others were modified to include only information needed to fulfill the department's statutory obligations.

Original signatures need to be on all forms filed where a signature is required. All forms should be typewritten originals, authenticated copies, or computer duplicates. All of the filings need to be received on or before January 30, 2004. A statutory fine of \$25 per day will be assessed for each day delinquent.

The "Supervisory Committee Form", which Credit Unions filed with us every December and June, is no longer required. However, the Supervisory Committee is still required to comply with the statute (RSA 394-B:41).

As detailed below, Non-Depositories will no longer file the FFIEC 041.

If you have any questions do not hesitate to contact Chief Bank Examiner Chuck O'Connor. Also, the state forms are available on our website.

### Quarterly Filing for Non-Depository Trust Companies

Beginning with the December 2003 filings, Non-Depository Trust Companies will no longer be required to file the FFIEC 041 Report. The new form, an Excel spreadsheet titled "Quarterly Report for Non-Depository Trust Companies", is available on our website. Download the file and follow the instructions imbedded in the file. If you have any questions, please contact Chief Bank Examiner Chuck O'Connor at 271-3561.

### Robberies

Reporting robberies is not required under the New Hampshire statutes. However, we would like to ask that all robberies be reported. You can call the main number at 271-3561 or send a fax to 271-1090.

### Board of Trust Company Incorporation

The Board of Trust Company Incorporation ("Board") is comprised of the bank commissioner, the state treasurer, or a deputy treasurer and the attorney general or a designee from the office of the attorney general. The deputy bank commissioner serves as clerk of the Board. The Board entertains petitions for new bank charters, amendments to articles, certain branch office applications and name changes. The Board also recommends adoption of administrative rules. The Board's rules can be found on our website.

## New State Chartered Entity

On September 9, 2003 the Board and the Bank Commissioner authorized Entrust Bank and Trust, 104 North State Street, Concord, NH to open. Entrust is a non-depository trust company.

## CONSUMER CREDIT DIVISION NEWS

### New License Information Number

If you have questions about your license call the licensing information number at 271-8675. Linda Austin or Betty Pollock will be more than happy to answer any questions you have.

### Application Status On-Line

Applicants who have applied for a license can now check the status of the application by logging on to our website. The applicant's Federal Tax Identification Number is required. The applicant can view the date the application was received, the date it was reviewed, and any missing items that have been requested. This information is updated weekly.

### Licensing Information Update

Everyone who filed a complete renewal form, fee and bond (if required), should have their license shortly. A list of currently licensed (those that renewed through December 31, 2004) companies will be posted on our website for your review and information on January 2, 2004, and will be updated regularly.

We anticipate updating our website soon to provide you with better information on the requirements for filings, reports, and examinations as well as procedures for amending license applications on file with us (such as, how to open a new branch office in NH, what to do when ownership of a company changes, and what to file when a new branch manager takes over). Currently, you may obtain updated versions of the consumer credit statutes and regulations on our website.

It may be important for your company to review these in light of the many changes that have occurred in the consumer credit statutes.

### Requirements for Consumer Credit Companies on Consumer Complaint Inquiries

When licensees receive a consumer complaint inquiry from us, most respond with a letter explaining the situation from their perspective. While this is a good start, it is not enough to keep your company in compliance with the law. Once you receive a complaint inquiry from the department you must respond in writing to both the department and the consumer acknowledging your receipt of the complaint. This acknowledgment is due within 30 days from receipt. Return receipt requested cards are not sufficient. A separate written acknowledgment is required.

Once you acknowledge the complaint, the next step is to investigate and respond to the department and the consumer. You must either make the appropriate corrections to the consumer's account and transmit written notification of such along with documentary evidence to the department and the consumer or provide a written explanation or clarification to the consumer and the Department as to the reasons why your organization believes its actions are correct, along with copies of documentary evidence. You have 60 days from receipt of the complaint to respond in the above described manner.

Failure to respond to either the consumer or the department in the above described manner and within the specified time frames (30 and 60 days respectively) subjects your organization to a fine in the amount of \$50 per day for each infraction.

If, because of extenuating circumstances beyond your control, your organization is unable to comply with the 60 day response time frame you may make a written request to the Commissioner for a waiver. Waivers will not be granted unless:

- the request is received by the Department within 50 days of your receipt of the complaint; and
- it specifies the reason for the request; and
- it specifies the date the organization will comply with the above described provisions.

Waivers will be granted or denied within five days of receipt.

If you have any questions about the procedures, feel free to contact us for guidance.

## **Deadlines That Are Fast Approaching**

### **ANNUAL REPORT**

On February 2, 2004, all licensees (except retail sellers) will have to file an annual report of business conducted in New Hampshire during 2003 (the deadline is February 1st, but since February 1st falls on a Sunday this year, the due date is moved to February 2nd). You will also report information about the company such as its officers, directors and owners and if it is an out-of-state company, the name and address of the New Hampshire registered agent. Mortgage brokers and bankers will have to report information about all mortgage originators who worked for them during any period in 2003. The form is being prepared and will be on the website on January 5, 2004. It is very important to file this information in a timely manner as it must actually reach us on or before February 2, 2004. As in the past, a statutory penalty of \$25 per day accrues for each day the report is late, which can quickly become very expensive. Accuracy of the information is imperative. The reason for the strictness of this entire provision in the law is that the Bank Commissioner must make a consolidated report of such information to the Governor and Executive Council.

Many first mortgage brokers have only recently obtained a second mortgage broker license by filing a notice with the department. These second mortgage broker licensees will have to file an annual report of second mortgage business in addition to the first mortgage broker annual report.

### **FINANCIAL STATEMENT**

In the past, licensees submitted financial statements at renewal time. Since the renewal process has been streamlined, the deadline to file financial statements has changed. Licensees (except retail sellers) must now file financial statements within 90 days of their fiscal year end.

Licensees should file their audited financial statement, when an audit has been conducted, and otherwise should file a financial statement, including a balance sheet, income statement, cash flow statement and a statement of changes in owner's equity, all prepared in accordance with generally accepted accounting principles. For those who file internally prepared statements, an officer of the company who is responsible for the preparation and content of the financial statements, should sign and date the statements with an attestation that such statements are true and accurate to the best of his or her belief and knowledge. Publicly traded companies may file their Form 10K and most recent 10Q, but the company licensed must be the publicly traded company (do not submit financial

statements for the parent company or consolidated financial statements that do not reflect the actual performance and financial position of the licensee itself).

In most cases, a company's fiscal year end will be December 31, 2003 and the report will be due on Tuesday, March 30, 2004. Reports are deemed filed when received by us, not the date they are mailed. Companies with fiscal year end dates other than December 31st must count 90 days from the date of the fiscal year end and make sure we receive the annual financial statement on or before that day. The filing requirement is in place because we are charged with ensuring that its licensees demonstrate financial soundness and integrity. As with the annual report, a statutory penalty of \$25 per day accrues for each day the report is late.

## **Examination Report Responses**

Licensees who have received a report of examination have up to 30 days in which to review the report and submit a response to request or recommend any changes to the report. We generally will only correct factual inaccuracies. If there remains a dispute as to the factual accuracy of the report, the licensee may request a closed hearing on the matter. Such requests for hearing must be received within the same 30 day period. In most cases, factual accuracy is not an issue, and the licensee's response should address any deficiencies cited in the report and the remedial action the licensee will take to correct such deficiencies. There is no requirement for a licensee to respond to a report, but the report will be accepted and filed with us and its factual content can be used in any disciplinary or enforcement hearing.

## **Examination Documents and Procedures**

### **ALL LICENSEES:**

Examinations consist of a review of loan files and any documents relating to your company's legal status and financial well being, regardless of the type of license you hold. In addition to loan files related to NH loans the company has made, the documents you will be asked to provide include, but are not limited to the following:

- Corporate or organizational documents evidencing "Good Standing". (This encompasses the home state Certificate of Incorporation and the Foreign Corporation Certificate)
- Trade name certificates
- List of owners, officers, directors (or members, partners, limited partners)
- Current financial statements to include a balance sheet and a profit / loss statement
- The most recent federal income tax return
- A list of correspondent lenders or brokers.
- Work papers supporting the figures reported on your most recent annual report
- Current interest rate sheets
- Written consumer complaints
- Copies of any insurance agreements available through your company
- A summary of all loan products offered by your company
- A list of all affiliates, subsidiaries, parents with whom your enterprise is associated
- Copies of media advertisement distributed in New Hampshire.
- A copy of your company's procedure manual.
- A list of current lending or brokering licenses issued by other states.
- Copies of GNMA, FNMA, FHLMS approval letters if you hold a mortgage license and issue Rate Lock Commitments

### **MORTGAGE BROKERS AND BANKERS:**

If a company is licensed as a mortgage broker, we require that they retain complete loan files, even though the company does not act as a mortgage banker. A “complete” loan file would be copies of all paperwork, including any work papers and correspondence, which were generated during the lending process. These documents include but are not limited to:

- 1003 credit application
- Note
- Mortgage
- Good faith estimate
- Truth-in-lending (initial and final)
- HUD-1 or HUD-1A (initial and final)
- Appraisal
- Affiliated Business Arrangement disclosure
- Equal Credit Opportunity Act disclosure (adverse action notice)
- Credit report
- 1008 Uniform Underwriting Worksheet
- All verifications performed such as VOEs and VORs
- All re-disclosures provided to the applicant during the lending process
- Copies of the “Privacy Statements” given to the applicant

### **SALES FINANCE COMPANIES:**

The following is a list of documents that are reviewed as part of the examination of a sales finance company. We require that you provide complete loan files, which would be copies of all paperwork generated during the lending process, including notes, correspondence and work papers. These documents include but are not limited to:

- Retail Installment contract
- Purchase and Sales Agreement (purchase order)
- Detailed Payment Transaction history
- All Receipts for payments made in cash
- Copies of any warranties / service agreements sold with the vehicle
- A list of correspondent retail sellers (motor vehicle dealers)
- In addition to the above, all repossession files must also include:
  1. The NH Affidavit of Repossession
  2. The Notice of Default
  3. The Notice of Disposition
  4. The Vehicle Damage form
  5. The Auction Consignment form

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